101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 101-349
Part 1

FORFEITURE AMENDMENTS ACT OF 1989

NOVEMBER 13, 1989.—Ordered to be printed

Mr. HUGHES, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3550 which on October 31, 1989, was referred jointly to the Committee on the Judiciary and the Committee on Energy and Commerce]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3550) to amend section 524 of title 28, United States Code, with respect to the Special Forfeiture Fund, to amend section 511 of the Controlled Substances Act to make technical, clarifying, and administrative changes, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 3, line 2 strike out "year." and insert in lieu thereof "year.'.".

Page 3, line 9 strike out "Code." and insert in lieu thereof "Code.'.".

BACKGROUND

H.R. 3550 was developed by the Committee on the Judiciary to parallel two provisions (sections 6 and 7) of S. 1735. S. 1735 was passed by the Senate on October 5. On October 10, the bill was referred in the House to the Committees on Energy and Commerce, Education and Labor, Public Works and Transportation, the Judiciary, and Foreign Affairs.

S. 1735 was itself carved out of the Senate passed version of H.R. 3015, the transportation and related agencies Appropriations Act for FY 90. Most of this year's anti-drug funding, including the funding of the President's drug strategy, is contained in H.R. 3015.

Following Senate passage of H.R. 3015, the leadership of several House legislative committees, including the Committee on the Judiciary, objected to the fact that several anti-drug legislative items,

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including items requested by the President to help implement the National Drug Strategy he announced on September 5, were attached by the Senate to this appropriations bill.

The Speaker of the House then asked the Senate to send these items to the House in a legislative, rather than an appropriations bill. The Senate leadership agreed. The legislative items previously in H.R. 3015 were incorporated into S. 1735, which was passed and sent to the House. The Senate then receded from its disagreement with the House over these items in H.R. 3015, and they were dropped from that bill in conference.

The House leadership in exchange agreed that the House would promptly consider the legislative proposals contained in S. 1735. Because of the referral of that bill to five House committees, it was determined that the most appropriate way to process these proposals would be for each committee to develop a separate bill or bills addressing those matters in S. 1735 within its jurisdiction.

H.R. 3550 addresses the two items (sections 6 and 7) in S. 1735 within the jurisdiction of the Committee on the Judiciary. Section 2 of H.R. 3550 parallels section 6 of S. 1735. Sections 3, 4, and 5 represent the House position, as reflected in H.R. 2806 as passed by the House on October 17, on issues contained in section 7 of S. 1735.

Section 2 of the bill adds one year (FY 93) to the authority (FY 90, 91, and 92) for the transfer to the Director of the Office of National Drug Control Policy of up to $150 million of funds remaining in the Department of Justice forfeiture fund at the end of each fiscal year.

Section 2 also provides that such transfers shall take place on a quarterly basis, rather than waiting until the end of the fiscal year.

It contains a provision calling upon the President to submit a request for a supplemental appropriation for fiscal year 1990. This provision is needed to make the quarterly transfer meaningful.

Finally, section 2 contains an amendment freezing funds otherwise available to the drug director from transfers out of the Justice forfeiture fund, if the director has not by that date after January 31, 1990, made designations of "high intensity drug trafficking areas". The Director's second strategy report to Congress is due February 1, 1990.

Sections 3, 4, and 5 consist of the text of H.R. 2806, which the House passed on October 17. A full discussion of the provision of H.R. 2806 is contained in part I of House Report No. 101-281. That report is hereby incorporated in this report.

Section 3 consists of amendments to provisions of Federal forfeiture law enacted as a part of the Anti-Drug Abuse Act of 1988. These provisions were designed to prevent circumvention of State laws regarding the distribution of proceeds of State forfeiture.

Section 3 represents the House position on this issue, which is to preserve this non-circumvention restriction in a modified form, but to also give states two years to modify their laws before such restrictions apply. The Senate bill would effectively repeal this anti-circumvention provision.

Section 4 authorizes the Attorney General to warrant clear title to property forfeited to the United States and subsequently sold.

Section 5 permits the Attorney General to use administrative forfeiture for non-contested cases involving cash amounts in excess of $100,000.

COMMITTEE ACTION AND REPORT

On April 24, 1989, the Subcommittee on Crime held an oversight hearing on Federal Drug Forfeiture Activity. Appearing at the hearing were: Mr. James T. Moore, Commissioner, Florida Department of Law Enforcement, Tallahassee, Florida, representing his Department and the International Association of Chiefs of Police; Mr. Joseph W. Dean, Secretary, Department of Crime Control and Public Safety, North Carolina, representing the National Criminal Justice Association and the National Govenors' Association; Mr. Ralph Page, Crime Stoppers of Broward County; Mr. Gene L. Dodaro, Associate Director for Management Reviews, U.S. General Accounting Office, Washington, D.C., and other representatives of the General Accounting Office; Mr. Cary Copeland, Deputy Associate Attorney General, Department of Justice, Criminal Division; accompanied by representatives of the U.S. Department of Justice, Southern District of Florida; and Mr. William F. Riley, Comptroller of U.S. Customs Service, and representatives of the U.S. Customs Service, Southeast Region.

Subsequent to this hearing Subcommittee Chairman Hughes (for himself, Mr. McCollum, Mr. Boucher, and Mr. Smith of Mississippi) introduced H.R. 2806 on June 29, 1989.

On September 14, 1989 the Subcommittee on Crime marked up H.R. 2806 and, a quorum being present, favorably reported the bill without amendments by unanimous consent to full Committee.

On October 3, 1989 the Committee on the Judiciary considered H.R. 2806 and, a quorum being present, favorably reported the bill to the full House of Representatives by a unanimous voice vote.

On October 17, the House passed H.R. 2806 as amended.

On October 31, 1989 Subcommittee Chairman Hughes introduced H.R. 3550. On November 2, 1989 the Subcommittee on Crime marked up H.R. 3550 and, a quorum being present, favorably reported the bill without amendments by unanimous consent to the full Committee.

On November 9, 1989, the Committee on the Judiciary considered H.R. 3550 and, a quorum being present, favorably ordered reported the bill to the full House of Representatives by a unanimous voice vote.

JURISDICTIONAL CONCERNS OF COMMITTEE ON ENERGY AND COMMERCE

H.R. 3550 was referred jointly to the Committees on the Judiciary and Energy and Commerce. In order to permit expeditious considerations of H.R. 3550 by the House, the Committee on the Judiciary sought, and received, the agreement of the Committee on Energy and Commerce to forgo consideration of the bill by the latter Committee without prejudice to that Committee's jurisdiction over the Controlled Substances Act.

SECTION-BY-SECTION ANALYSIS

Section 1 is the short title—the Forfeiture Amendments Act of 1989.

Section 2 adds one year (Fiscal Year 1993) to the existing authority (FY 90, 91, 92) of the Attorney General to transfer excess funds of up to $150 million a year from the Department of Justice Forfeiture Fund to a Special Forfeiture Fund. The President in consultation with the Director for National Drug Policy makes a detailed request for the use of these funds as part of his annual budget message. This section also allows for the transfer of funds to occur quarterly rather than only at the end of each fiscal year as in existing law. The provision maintains the authority of the Attorney General to retain up to $15 million in the DOJ Forfeiture Fund for necessary asset-specific expenses at the end of the fiscal year or 1/10th of the total obligations for the preceding fiscal year, whichever is greater. The 1/10th figure in this bill would replace the 1/12th figure in existing law.

This section makes some technical amendments to the Special Forfeiture Fund and contains an amendment which would freeze outlays from the Special Forfeiture Fund after January 31, 1990 if the Director for National Drug Policy has not made designations of High Intensity Drug Trafficking Areas.

It should be pointed out that the conference report for the Department of Transportation appropriations bill appropriates $115 million from the Special Forfeiture Fund for prison construction for fiscal year 1990. This was done in response to a request by Director Bennett. Therefore, Section 2(d) only applies to those monies in the forfeiture fund which have not already been appropriated for fiscal year 1990. In future years, it is the Committee's intention that the President will submit to Congress his plans for expenditures from the Special Forfeiture Fund with his yearly budget submission. Congress will respond to this request with an appropriations bill, and the Director then will be authorized to spend the funds whenever he receives them in the following fiscal year. For example, in 1990, the President should include in his budget request the Director's desires for FY 1991 Special Forfeiture Fund expenditures. By the time the fund receives deposits from the Justice Department after the first quarter of FY 1991, the Director will be authorized to expend the deposited monies.

Finally, this section contains a provision calling upon the President to submit a request for a supplemental appropriations for fiscal year 1990 in order to make the proposed quarterly transfer meaningful for fiscal year 1990.

Section 3 rewrites Section 511(e)(3) of the Controlled Substances Act (21 U.S.C. 881(e)(3)) by deleting subsection (e)(3)(B) and consolidating subsection (e)(3)A as subsection (3). It creates a new subsection (e)(4) which clarifies the Congress' intent in enacting former subsection (e)(3)B. It directs the U.S. Attorney General not to transfer property to "any State or local law enforcement agency" under Subsection e(1)(A) is such a sharing is an "adoptive seizure process" *and* that process was used to circumvent State law. The adopted seizure process is defined as one where all activity, e.g. investigations, seizures, and prosecutorial activity, were carried out under

the aegis of State law and without *any* Federal activity or cooperation except for the actual forfeiture under this Section.

The Attorney General is allowed to rely on assurance from the State Attorney General that the intent of the "adoptive forfeiture" was not to circumvent their own laws, and this can be a general assurance. The bill makes this determination an administrative one by the U.S. Attorney General, which would not be subject to judicial review. New subsection (e)(4) would go into effect on October 1, 1991 and the present subsection (e)(3)B is repealed.

Section 4 is an amendment to Section 524(c) of Title 28 and is designed to increase the marketability of forfeited property by allowing the Attorney General to warrant clear title thereto. Currently, only the criminal forfeiture statues, 21 U.S.C. 853(n)(7) and 18 U.S.C. 1467, 1963(1)(7) and 2253(m), expressly authorize the Attorney General to convey good title. The sale of forfeited property by quit-claim or general release deed has met growing resistance from the title insurance industry, which is apparently concerned about the validity of the title acquired by the government through noncriminal forfeiture proceedings. This amendment would obviate that concern and thereby permit the government to realize the full fair market value from the sale of all forfeited property.

Section 5 adds a new subsection (1) to section 511 of the Controlled Substances Act (21 U.S.C. 881) and allows the Attorney General to seize and forfeit moneys in the same fashion as the Federal government is allowed to seize and forfeit conveyances under § 607 of the Tariff Act of 1930.

In doing so it alleviates some of the problems concerning large cash seizures, which at the present time must go through an extended judicial process if the amount is over $100,000 even though most of the cases end up as default judgments. This section allows the government to administratively forfeit these large cash seizures in the same fashion it can forfeit conveyances with a value over $100,000 under present law. It still reserves all the rights of owners in contested cases.

Committee Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Statement of Budget Authority and Related Items

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee reports that no statement under section 308(a)(1) of the Congressional Budget Act of 1974 is required.

Congressional Budget Office Cost Estimate

No cost estimate on H.R. 3550 had been received from the Congressional Budget Office as of the time of filing this report.

Oversight Findings of Committee on Government Operations

In accordance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that, with respect to the subject matter of the bill, the Committee on Government Operations did not submit to the Committee findings or recommendations based on investigations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

Inflationary Impact Statement

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the bill will have no inflationary impact on prices and costs in the operation of the national economy.

Committee Cost Estimate

The Committee believes that adoption of H.R. 3550 will not result in significant costs to the Federal Government.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in exiting law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 524 of Title 28, United States Code

§ 524. Availability of appropriations

(a) * * *

* * * * * * *

(c)(1) * * *

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[(9) There] *(9)(A) There* are authorized to be appropriated such sums as necessary for the purposes described in subparagraphs (A)(ii), (B), (C), (F), and (G) of paragraph (1). [At the end of each of fiscal years 1990, 1991, and 1992, unobligated amounts not to exceed $150,000,000 remaining in the Fund shall be deposited in the Special Forfeiture Fund, except that an amount not to exceed $15,000,000 or, if determined necessary by the Attorney General to meet asset specific expenses, an amount equal to one-twelfth of the previous year's expenditures may be carried forward and remain available for appropriation in the next fiscal year.]

(B) Subject to subparagraph (C), in each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may transfer from the Fund not more than $150,000,000 to the Special Forfeiture Fund established by section 6073 of the Anti-Drug Abuse Act of 1988. Such transfers shall be made at the end of each quarter of the fiscal year involved and on a quarterly pro rata basis.

(C) Transfers under subparagraph (B) may be made only from excess unobligated amounts and only to the extent that, as deter-

mined by the Attorney General, such transfers will not impair the future availability of amounts for the purposes under paragraph (1).

(D) At the end of each of fiscal years 1990, 1991, 1992, and 1993, the Attorney General may retain in the Fund not more than $15,000,000, or, if determined by the Attorney General to be necessary for asset-specific expenses, a greater amount equal to not more than one-tenth of the total of obligations from the Fund in preceding fiscal year.

(10) Following the completion of procedures for the forfeiture of property pursuant to any law enforced or administered by the Department, the Attorney General is authorized, at his discretion, to warrant clear title to any subsequent purchaser or transferee of such forfeited property.

[(10)] *(11)* For the purposes of this subsection, property is forfeited pursuant to a law enforced or administered by the Department of Justice if it is forfeited pursuant to—

(A) any criminal forfeiture proceeding;

(B) any civil judicial forfeiture proceeding; or

(C) any civil administrative forfeiture proceeding conducted by the Department of Justice, except to the extent that the seizure was effected by a Customs officer or that custody was maintained by the United States Customs Service in which case the provisions of section 613A of the Tariff Act of 1930 (19 U.S.C. 1613a) shall apply.

ANTI-DRUG ABUSE ACT OF 1988

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TITLE I—COORDINATION OF NATIONAL DRUG POLICY

SUBTITLE A—NATIONAL DRUG CONTROL PROGRAM

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SEC. 1005. DEVELOPMENT AND SUBMISSION OF NATIONAL DRUG CONTROL STRATEGY.

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(c) HIGH INTENSITY DRUG TRAFFICKING AREAS.—(1) * * *

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(4) Amounts in the Special Forfeiture Fund established by section 6073 of this Act shall not be available for any purpose after January 31, 1990, if the Director has not, by that date, made designations under paragraph (1).

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TITLE VI—ANTI-DRUG ABUSE AMENDMENTS ACT OF 1988

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Subtitle B—Asset Forfeiture Amendments

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SEC. 6073. ESTABLISHMENT OF SPECIAL FORFEITURE FUND.

(a) IN GENERAL.—There is established in the Treasury of the United States the Special Forfeiture Fund (hereafter referred to in this section as the "Fund") which shall be available to the Director of the National Drug Control Policy without fiscal year limitation in such amounts as may be specified in appropriations acts.

[(b) DEPOSITS.—Beginning in fiscal year 1990, there shall be deposited in the Fund not to exceed $150,000,000 in unobligated amounts remaining at the end of each fiscal year from the Department of Justice Assets Forfeiture Fund (28 U.S.C. 524(c)) except that amount specified in section 524(c)(9) of title 28, United States Code, may be carried forward and remain available for appropriation in the next fiscal year.]

(b) DEPOSITS.—Deposits in the Fund shall be made by transfer from the Department of Justice Assets Forfeiture Fund in the manner provided in section 524(c)(9) of title 28, United States Code.

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SECTION 511 OF THE CONTROLLED SUBSTANCES ACT

FORFEITURES

SEC. 511. (a) * * *

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(e)(1) * * *

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[(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A)—

[(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited, and the total law enforcement effort with respect to the violation of law on which the forfeiture is based; and

[(B) is not so transferred to circumvent any requirement of State law that prohibits forfeiture or limits use or disposition of property forfeited to State or local agencies.]

(3) The Attorney General shall assure that any property transferred to a State or local law enforcement agency under paragraph (1)(A) has a value that bears a reasonable relationship to the degree of direct participation of the State or local agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based.

(4) The Attorney General shall assure that property is not transferred following utilization of an adopted seizure process to circumvent any requirement of State law that limits the disposition of property forfeited to State or local agencies. An adopted seizure process is one in which investigative and prosecutive activity related to the seizure (other than activity relating to the actual forfeiture) was

carred out exclusively by State and local agencies. In determining whether the transfer would be in circumvention of State law, the Attorney General may rely upon a written opinion of the attorney general of the pertinent State that such a process is not being utilized to circumvent State law. A decision by the Attorney General under this subsection is not subject to review by any court.

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[(1)] *(k)* The functions of the Attorney General under this section shall be carried out by the Postal Service pursuant to such agreement as may be entered into between the Attorney General and the Postal Service.

(l) Notwithstanding any other provision of this title, the Attorney General may carry out seizure and forefeiture of moneys in the manner provided with respect to seizure and forfeiture of conveyances by the Secretary of the Treasury under section 607 of the Tariff Act of 1930.

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